

# Receiving Afghanistan's asylum seekers: Australia, the Tampa 'Crisis' and refugee protection

by William Maley

On 22 January 2002, the Chairman of the government-appointed Council for Multicultural Australia, Neville Roach, resigned his position. In a newspaper article three days later, this prominent and highly-respected businessman explained why he had taken such a dramatic step, which made headlines right around the country. "If an adviser", he wrote, "is faced with a government that has locked itself into a position that is completely inflexible, the opportunity to add value disappears". The asylum seeker controversy, he went on, "has unquestionably done serious damage to Australia's multicultural fabric". He appeared particularly distressed at the perverse operation of Australia's new 'Temporary Protection Visa' regime for refugees who had arrived without documentation, and argued that "compassion seems to have been thrown out the door".

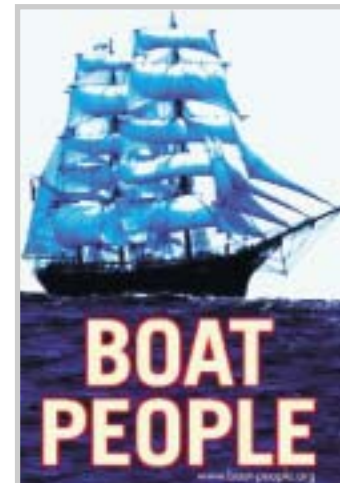
The context of this blast was the furore which resulted from the so-called 'Tampa Affair', an episode which exposed a range of important tensions in the international refugee protection regime. In August 2001 the Norwegian freighter *MV Tampa* rescued a large group of refugees, the bulk of them of Afghan Hazara origin, from a sinking vessel in the waters between Indonesia and Australia. With an eye to the opinion polls, the Australian government under Prime Minister John Howard had sought to deny the *Tampa* permission to enter Australian territorial waters, a move hauntingly reminiscent of the June 1939 rejection by Cuba of Jewish refugees on the *St Louis*, a vessel subsequently forced to return to Europe – the so-called 'Voyage of the Damned'. Fearing for the well-being of the 434 rescued persons aboard, the *Tampa's* captain sailed into Australian waters around Christmas Island only to have his vessel boarded by Australian commandos. After a standoff, it was

announced that the government of the tiny Pacific nation of Nauru, a state not party to the 1951 Convention, had agreed to the processing of asylum claims on its soil. Nauru's agreement was secured with a large aid package, including payment of the unpaid Australian hospital bills of certain Nauruan citizens.

Buoyed by the outcome of the Tampa Affair and trumpeting the merits of its 'Pacific solution' to the problem of uninvented asylum seekers, the Howard government was returned to office in a general election in November 2001. The government's nationalistic election campaign was dominated by denunciations of 'people smuggling', assertions that it alone would determine who could enter Australia, uncorroborated insinuations that 'terrorists' might be seeking to enter Australia by boat in the guise of refugees, and ministerial allegations (grudgingly retracted after the election) that certain 'boat people' had sought to throw their children into the sea as a way of engaging Australia's protection obligations under international law. Seeking to link itself to the US 'War on Terrorism' in the wake of the 11 September attacks, the government even committed Australian ground troops to support the campaign in Afghanistan against Osama Bin Laden's al-Qa'ida and the Taliban. The irony of its joining an attack on the Taliban while anathematising refugees fleeing from Taliban-dominated territories was largely lost on the Australian public, although not on all observers.

The difficulties of the situation in Afghanistan and the dire circumstances which may have prompted asylum seekers to have recourse to the services offered by people smugglers received scant attention from Australia's mainstream political parties – the Liberal Party and the

National Party, which made up the country's ruling coalition, and the opposition Australian Labor Party – and it was left to minor parties, such as the Australian Democrats and the Greens, to proffer a more nuanced account of the factors underpinning forced migration to Australia. Nonetheless, there are a number of implications of these events which



Logo of refugee information organisation reminding all non-indigenous Australians that they too are boat people.

deserve to be highlighted as part of the ongoing debates over refugee protection, durable solutions to refugee problems and the nature and content of state sovereignty.

## Domestic politics

One danger is that developed countries may seek to use refugee resettlement as a means of evading their specific refugee protection responsibilities. Australia ratified the 1951 Convention in 1954 and its 1967 Protocol in 1973. The key obligations under these instruments relate to refugees who arrive in the territory of a party to the Convention, irrespective of their means of arrival. The resettlement of refugees from other territories is a voluntary measure which states **may** undertake but is not an obligation of parties to the Convention itself. Yet the Australian government repeatedly sought to

justify its actions by describing those who arrived with the help of smugglers as 'queue jumpers' who by their actions had compromised Australia's ability to help the 'neediest' refugees. The claim was spurious on three grounds.

First, the government was able to commit itself to making available the same number of notional places to UNHCR for refugee resettlement, namely 4,000, as in previous years; cuts in the numbers of humanitarian resettlement visas - cuts driven by budgetary priorities but ultimately of a discretionary character - were not made in **refugee** places. This was scant comfort to Afghans, since an ordinary Afghan's chance of even securing an interview with one of UNHCR's overworked protection officers in Pakistan was extremely slim, but it showed that the claim that 'boat people' were hurting 'needier' people was hollow. Cuts came in the so-called Special Humanitarian Programme, for which applicants require sponsors in Australia but need not be Convention refugees.

Second, because the Hazaras (a Shiite minority which had long experienced discrimination and was viciously persecuted by the Taliban) were under-represented in Australia's Afghan community, they were particularly poorly placed to secure sponsorships and were thus effectively denied access to the Special Humanitarian Programme. It is no wonder that they made up the majority of Afghan boat arrivals and that the vast majority were found to be 'Convention' refugees.

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Finally, Australia's 'offshore' resettlement programme was skewed to match Australia's interests rather than those of needy refugees (even using medical screening to exclude disabled refugees whose conditions would be expensive to manage). A Refugee Council of Australia study concluded that the resettlement programme offered not "a place in a queue but a ticket in a lottery". It is hardly surprising that people smuggling flourished and actually drove the proportion of 'Convention' refugees within Australia's overall 'Humanitarian' Programme to an all-time high.

Domestic political considerations can all too easily overwhelm international obligations when the two appear to conflict sharply, and the prospects of short-term gains are likely to prove alluring, even when long-term costs may be considerable. The UN High Commissioner for Refugees, Ruud Lubbers, warned against this: "Asylum seekers have become a campaign issue in various recent and upcoming election battles, with governments and opposition parties vying to appear toughest on the 'bogus' asylum seekers 'flooding' into their countries ... Genuine refugees should not become victims yet again. Surely, there are other ways to win elections." Discussing Australia's attempts to exclude 'boat people', he pointedly observed that we need to "go for the law and not the law of the jungle".

### Sovereignty and paranoia

Claims of sovereignty can all too easily be used as a rhetorical device to minimise the force of international obligations. Here, there are two broad observations which are of some pertinence.

Committing one's state to observe certain norms of international law is itself a manifestation of sovereign capacity. For this reason, Australia's responsibilities under the 1951 Convention (and indeed those of any state under any treaty or convention which it voluntarily accepts) are not a limitation of its sovereign capacities but rather a reflection of sovereign capacity in action. Nor is it a valid claim that the Convention is not

working as it was intended in 1951; the claim which this

argument masks is actually that more people now fall within the definition of refugee in the 1951 Convention than expected by those states which drafted it. But if this is a problem, it is not the fault of the Convention and still less of refugees: it reflects rather the limitations which states, for political reasons, would like to be able to set on the ambit of their compassion. "Four or five thousand people a year, many of them women and children, offer no threat to the sovereignty of Australia", wrote former Liberal Prime Minister Malcolm Fraser in February 2002.

The second observation is that the claim that the ability to control population movements is an essential, sovereign state capacity is ahistorical, especially if one traces the origins of the modern state system to the Peace of Westphalia of 1648. Passports and visas are markedly more recent in provenance and cannot claim the sanctification of use since time immemorial. Just as visa controls were used in the 1930s in an attempt to block movements of European Jews from Germany and other states threatened by Nazism, so visa controls in more recent years have been used to block Afghans from making asylum applications in Western countries, forcing them to use the services of people smugglers.

Furthermore, paranoia over 'people smuggling', whether at mass or elite level, can prompt countermeasures which are arguably more degrading for a liberal democracy than any steps which smugglers might take. They also involve a high degree of hypocrisy for, as Sir Michael Dummett has recently argued, the "combination of harsh laws to restrict immigration and the drastic measures to prevent refugees from arriving frequently means that people fleeing terrifying or intolerable conditions have no other way of escaping: the blame for the existence of these reviled traffickers in human beings lies largely with the governments that have erected the barriers the traffickers are helping frightened people to circumvent." Australia's policy of mandatory detention for undocumented arrivals has seen refugees from Afghanistan held in stressful conditions in remote camps (such as the notorious Woomera detention centre, in which most Afghans are held) where the temperatures of the surrounding desert match the explosive power of the mood of despair which dehumanisation and uncertainty can produce.

To deter other refugees from approaching Australia, the government has been prepared to add to the pre-existing traumas of those who do. It is not the least surprising that the result has been suicide attempts, hunger strikes, and rampaging by those who feel that they are deliberately being treated as the scum of the earth. "What is happening in Woomera today", argued UNHCR spokesman Kris Janowski in January 2002 as another spate of disturbances made world headlines, "is a very graphic

illustration of how detention can go wrong."

### Delusions

Governments may be ludicrously – and in some cases almost criminally – sanguine about the prospect that refugees will be able to return safely to their homelands after only a brief period of temporary protection. In certain strictly circumscribed cases, where a short-term threat to refugees' well-being can be rapidly crushed, temporary protection may be appropriate. Can Afghan Hazaras safely return to Afghanistan? The Australian government suggested just that in January 2002 but to informed observers the claim was as insensitive as would have been a suggestion in May 1945 that the time was ripe for German Jews to be returned to Germany. There is no doubt that, with the fall of the Taliban and the installation on 22 December of Afghanistan's new Interim Authority, the country has turned an important corner. Its prospects are brighter now than for almost two decades. There is, however, a world of difference between the commencement of a transition process and the final institutionalisation of new political structures, a

process which takes years rather than months. The assurances given by the Interim Authority as to the safety of returnees are little more than statements of goodwill: the Authority is in no position to guarantee their security. And at the moment there is no international security force in the Hazarajat region from which the bulk of Hazara refugees originate, and little likelihood that one will be deployed there soon.

What all these problems reflect is a rigid way of viewing the world and an inability to recognise that human affairs are irreducibly complex. And it stands in stark contrast to the perspective of Sir Robert Menzies, founder of the Liberal Party and Australia's longest serving Prime Minister. In 1949, Menzies led the opposition in Parliament to the removal of a wartime refugee. Policy in this area, Menzies argued, "must be applied by a sensible administration, neither rigid nor peremptory but wise, exercising judgment on individual cases, always remembering the basic principle but always understanding that harsh administration never yet improved any law but only impaired it, and that notoriously harsh administration raises up to any law hostilities that may some

day destroy it." His successors have forgotten these wise words, if indeed they ever bothered to read them.

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1 Neville Roach 'Leadership minus compassion is tearing us apart', *The Sydney Morning Herald*, 25 January 2002.

2 Refugee Council of Australia *The Size and Composition of the 2000-2001 Humanitarian Program: Views from the Community Sector*, Refugee Council of Australia, 2000, p53.

3 See Ruud Lubbers 'Don't kick refugees just to score points: Politicians who demonise asylum seekers are playing with people's lives', *The Australian*, 20 June 2001; *Refugees*, vol 4, no 125, p31.

4 Malcolm Fraser 'Inhumane mood betrays the golden rule', *The Sydney Morning Herald*, 5 February 2002.

5 Michael Dummett *On Immigration and Refugees*, Routledge, 2001, p44.

6 BBC *World Television News*, 29 January 2002.

7 *Commonwealth of Australia House of Representatives Hansard*, 9 February 1949, p68.

